

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-209460

DATE: March 1, 1983

MATTER OF: Francis O. Stebbins & Robert A. Dunaway

DIGEST:

1. In negotiated procurements, failure of offeror to comply with award factors, including ability to meet required occupancy date, is proper basis for rejection of proposal, notwithstanding low price offered.
2. Where occupancy date is clearly listed as an award factor, protesters' claim that they were not informed that the date was firm and unalterable is without merit.
3. The fact that the incumbent contractor may enjoy a competitive advantage by reason of his incumbency, absent a showing of unfair action by the Government, does not provide a basis to sustain a protest.
4. Alleged improprieties, not existing in the initial solicitation but subsequently incorporated therein, must be protested not later than the next closing date for receipt of proposals to be timely under 4 C.F.R. § 21.2(b)(1) (1982).

Francis O. Stebbins and Robert A. Dunaway protest the award of a contract for leased office space by the United States Forest Service under Solicitation for Offers No. R5-10-82-48. The protestors allege that the award was improper because (1) the award was not made to the low offeror, (2) the agency did not advise them that the required occupancy date was firm and unalterable, and (3) the amendments to the solicitation were tailored to favor the other offeror.

The protest is denied.

The Forest Service issued the solicitation on June 14, 1982, to obtain leased office space for the Six Rivers National Forest Supervisor's Office. Two offers were

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received in response to the solicitation. One was from the current lessor, William D. Brown, and the other from the protesters. After preliminary evaluation of the offers, the Forest Service conducted negotiations with both offerors. Brown submitted a best and final offer of \$145,000 per year and the protesters' best and final offer was \$109,771.20 per year. For evaluation purposes, the Forest Service adjusted this amount to \$121,771.20 to account for the costs of moving furniture and removing and re-installing certain equipment in the protesters' office space. Analysis of the best and final offers was completed, and award was made to Brown on September 30, 1982, in view of the fact that the existing lease was due to terminate on September 30th and did not contain a holdover tenancy clause.

The protesters claim that the award was improper because it was not made to the low offeror. Here, the solicitation for offers listed nine award factors, including price and a required occupancy date, that would be considered in awarding the lease. Although the protesters proposed a lower rental price than the awardee, they were unable to meet the required occupancy date. In a negotiated procurement, the failure of a proposal to comply with a material requirement of the solicitation is a proper basis for rejection, notwithstanding the proposal's low cost. 53 Comp. Gen. 382 (1973).

The protesters allege that their rejection for not meeting the October 1, 1982, occupancy date was improper because they were never advised by the Forest Service that the occupancy date was firm and unalterable. We find no factual basis for the allegation since the solicitation clearly required an occupancy date of October 1 and made the occupancy date one of the award factors.

The record indicates that the contracting officer brought the issue of the occupancy date to the protesters' attention at the September 13, 1982, negotiation meeting and asked the protesters to reconsider their occupancy date. The protesters then were afforded an opportunity to revise their proposal to conform with all the requirements set

forth in the solicitation. We have held that requests for clarification or amplification that lead offerors to areas of the proposals that are unclear are sufficient to alert offerors to deficiencies. Health Managements Systems, B-200775, April 3, 1981, 81-1 CPD 255. Thus, we cannot sustain the protest on the basis of this allegation.

As a third basis for protest, Stebbins and Dunaway contend that the inflexible interpretation of the required occupancy date was such that all potential offerors other than the current landlord would be precluded from receiving the award. However, even if Brown's incumbency as a landlord placed Stebbins and Dunaway at a competitive disadvantage, we have held that the fact that certain firms enjoy a competitive advantage by reason of their incumbency or their own particular circumstances does not provide a basis to sustain a protest. Fox & Company, B-197272, November 6, 1980, 80-2 CPD 340.

The protesters also complain that the incumbent realized a competitive advantage because amendments to the solicitation deleted the requirements for double-glazed windows, air conditioning, and public parking facilities and added the cost of relocating as an item to be considered in determining which offer was most advantageous to the Government. We cannot consider the merits of this complaint.

Our Bid Protest Procedures require that alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(b)(1) (1982). Since the best and final offers were due on September 27, 1982, and the protest was not filed until October 6, 1982, the issue is not timely raised and will not be considered.

The protest is denied in part and dismissed in part.

Milton J. Fowler
for Comptroller General
of the United States